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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Robert P. Macaulay et al.	§	Art Unit:	2616
Serial No.:	09/723,591	§	Examiner:	Robert C. Scheibel
Filed:	November 28, 2000	§		
For:	Method and Apparatus for Cloning Terminals in a Communications Network	§	Atty. Dkt. No.:	13469ROUS01U (NRC.0008US)

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF PURSUANT TO 37 C.F.R § 41.37

Sir:

The final rejection of claims 1-14, 16-23, 25-31, 33-35, 37-40, and 43-48 is hereby appealed.

I. REAL PARTY IN INTEREST

The real party in interest is Nortel Networks Limited.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF THE CLAIMS

Claims 1-14, 16-23, 25-31, 33-35, 37-40, and 43-48 have been finally rejected and are the subject of this appeal. Claims 15, 24, 32, 36, 41, and 42 have been cancelled.

Date of Deposit: May 14, 2007

I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313.

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IV. STATUS OF AMENDMENTS

No amendments after final rejection were submitted.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The following provides a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings by reference characters, as required by 37 C.F.R. § 41.37(c)(1)(v). Each element of the claims is identified by a corresponding reference to the specification and drawings where applicable. Note that the citation to passages in the specification and drawings for each claim element does not imply that the limitations from the specification and drawings should be read into the corresponding claim element.

Independent claim 1 recites a method of controlling communications in a network, comprising:

receiving (Fig. 2:132; Fig. 4A:202; Fig. 5:502) a request to clone a first terminal with a second terminal (Spec., 7:1-22; 10:2-50; 10:19-22; 12:1-3);

in response to the request to clone, associating (Fig. 2:134; Fig. 4A:211; Fig. 5:406) a logical identifier of the first terminal with the second terminal (Spec., 10:5-9; 10:29-31; 12:4-11);

receiving a call request (Fig. 4B:220; Fig. 5:416) specifying the logical identifier of the first terminal, the call request to initiate a first call session (Spec., 11:8-10; 12:13);

in response to the call request, sending (Fig. 4B:224; Fig. 5:424) an alert indication to the second terminal regarding the first call session (Spec., 11:10-12; 12:15);

receiving (Fig. 4B:240) a second indication from the second terminal for initiating a second call session with a third terminal (Spec., 11:25-27);

in response to the second indication, accessing profile information associated with the first terminal to process (Fig. 4B:244) the second indication for establishing the second call session between the second terminal and the third terminal (Spec., 11:29-31).

Independent claim 3 recites a method of controlling communications in a network, comprising:

receiving (Fig. 2:132; Fig. 4A:202; Fig. 5:502) a request to clone a first terminal with a second terminal (Spec., 7:1-22; 10:2-5; 10:19-22; 12:1-3);

in response to the request to clone, associating (Fig. 2:132; Fig. 4A:211; Fig. 5:406) a logical identifier of the first terminal with the second terminal (Spec., 10:5-9; 10:29-31; 12:4-11);

wherein associating the logical identifier comprises storing a table associating the logical identifier with identifiers of the first and second terminals (Spec., 10:5-9; 10:29-31; 12:4-11);

receiving (Fig. 4B:240) a call request from the second terminal to initiate a call session with a third terminal (Spec., 11:25-27); and

in response to the call request, accessing profile information of the first terminal to establish the call session between the second terminal and third terminal (Spec., 11:29-31).

Independent claim 16 recites an article comprising at least one storage medium containing instructions that when executed cause a system to:

receive (Fig. 2:132; Fig. 4A:202; Fig. 5:502) a request to establish a first terminal as a clone of a second terminal (Spec., 7:1-22; 10:2-5; 10:19-22; 12:1-3);

in response to the request, associate (Fig. 2:134; Fig. 4A:211; Fig.5:406) a first logical port between a telephony proxy server and a switch module with both the first and second terminals (Spec., 10:5-9; 10:29-31; 11:1-7; 12:4-11);

receive (Fig. 4B:220; Fig. 5:416), at the switch module, a call request specifying the second terminal as a target (Spec., 11:8-10; 12:13);

forward (Fig. 4B:224; Fig. 5:420), by the switch module, the call request through the first logical port to the telephony proxy server (Spec., 11:10-14; 12:13-14); and

route (Fig. 4B:226; Fig. 5:424), by the telephony proxy server, the call request to the first terminal (Spec., 11:12-13; 12:15).

Independent claim 23 recites a system (Fig. 1:18) comprising:

an interface (Fig. 1:36) to a network coupled to at least a first terminal and a second terminal (Spec., 5:7-9); and

a control module (Fig. 1:40) adapted to, in response to a request from a first terminal, define the first terminal as a clone of a second terminal (Spec., 7:1-22; 10:2-5; 10:19-22), the control module adapted to further:

store a table (Figs. 3A-3C:44; Figs. 6A-6C:310) associating identifiers of the first and second terminals with a first logical port (Spec., 8:14-17; 11:1-7),

receive a call request containing a first logical identifier associated with the first and second terminals (Spec., 11:8-10; 12:13),

in response to the call request, alert both the first and second terminals (Spec., 12:13-15), and

based upon whether the first terminal or second terminal answered the call request, update the table to indicate that the one of the first and second terminals that answered the call request is the terminal to which subsequent call requests containing the first logical identifier are to be directed (Spec., 12:24-28).

Independent claim 37 recites a system (Fig. 7:500) for cloning terminals coupled to a network, comprising:

a control unit (Fig. 7:520); and

a plurality of soft client modules (Fig. 7:502, 504, 506) executable on the control unit,

each soft client module adapted to send a request to a server on the network to select one of the terminals to clone (Spec., 13:11-22),

wherein the soft client modules become clones of respective terminals (Spec., 13:11-22).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1-6, 8-13, 43, And 45-48 Rejected Under 35 U.S.C. § 103 Over U.S. Patent No. 6,775,369 (McClung) In View Of U.S. Patent No. 6,178,238 (Bozek).

B. Claims 37-40 Rejected Under 35 U.S.C. § 103 Over U.S. Patent No. 6,798,767 (Alexander) In View Of U.S. Patent No. 6,961,346 (Michalewicz).

C. Claim 7 Rejected Under 35 U.S.C. § 103 Over McClung In View Of Bozek And "Applicant's Admitted Prior Art" (AAPA).

D. Claim 14 Rejected Under 35 U.S.C. § 103 Over McClung In View Of Bozek And Alexander.

E. Claims 16-22 And 44 Rejected Under 35 U.S.C. § 103 Over Alexander In View Of AAPA.

F. Claims 23, 25-31, And 33-35 Rejected Under 35 U.S.C. § 103 Over Alexander In View Of AAPA And U.S. Patent No. 6,263,064 (O'Neal).

VII. ARGUMENT

The claims do not stand or fall together. Instead, Appellant presents separate arguments for various independent and dependent claims. Each of these arguments is separately argued below and presented with separate headings and sub-headings as required by 37 C.F.R. § 41.37(c)(1)(vii).

A. Claims 1-6, 8-13, 43, And 45-48 Rejected Under 35 U.S.C. § 103 Over U.S. Patent No. 6,775,369 (McClung) In View Of U.S. Patent No. 6,178,238 (Bozek).

1. Claims 1, 2, 5, 6, 8-13, and 46.

Independent claim 1 was rejected as being obvious over McClung and Bozek. It is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to independent claim 1.

The PTO has the burden under § 103 to establish a *prima facie* case of obviousness, and this burden can only be satisfied by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to

combine the relevant teachings of the references. *In Re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

The objective teachings of the prior art references, McClung and Bozek, indicate that the claimed subject matter is clearly non-obvious. To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed. *See Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). As held by the U.S. Supreme Court, two of these basic factual inquiries include: (1) determining the scope and content of the prior art; and (2) ascertaining the differences between the prior art and the claims at issue. *Id.*

In maintaining the rejection, it is respectfully submitted that the Examiner has fundamentally misunderstood the concept of subject matter that is recited in claim 1, and the Examiner has mis-applied the teachings of McClung and Bozek. Significantly, according to claim 1, a request is received to clone a first terminal with a second terminal (in other words, the second terminal is a clone of the first terminal). The remaining tasks of claim 1 are performed in the context of the second terminal cloning the first terminal: (1) in response to a call request that specifies the logical identifier of the *first* terminal, an alert indication is sent to the *second* terminal (the terminal that clones the first terminal); and (2) in response to the *second* terminal initiating a second call session with a *third* terminal, profile information associated with the *first* terminal is accessed to process the second indication for establishing the second call session between the second and third terminals. In other words, when the second terminal is a clone of the first terminal, a call to the first terminal is sent to the second terminal (clone terminal), and a call initiated by the second terminal (clone terminal) with a third terminal accesses profile information of the first terminal.

The elements of claim 1 are clearly not disclosed or hinted at by either McClung or Bozek, either individually or in combination. The Examiner basically has cited McClung as disclosing the incoming call processing tasks of claim 1, and cited Bozek as disclosing the outgoing call initiation tasks of claim 1. However, the rejection is defective since the Examiner is attempting to combine concepts of the two references that have nothing to do with the tasks recited in claim 1, which are performed in the context of the second terminal being a clone of the first terminal.

McClung describes a *roaming* feature in which a call manager 26 can direct a call to multiple telephony devices that are associated with the same extension. *See* McClung, 9:43-45. On the other hand, Bozek describes a speed dial calling mechanism that allows a user to place calling card calls (that include speed dialing numbers) using a switch that is not the home switch of the user. Bozek, Abstract. In such a case, as explained by Bozek, when a caller at a telephone station makes a calling card call, the caller is switched through an away switch to a calling card server switch, which calling card server switch accesses a calling card database to obtain information regarding the speed dialing number. Bozek, 2:45-60.

Fundamentally, note that Bozek is related to speed dial lookup when the user is at an away location. There is clearly no hint in Bozek of the user being at a clone terminal (*second* terminal) initiating a call session with a *third* terminal in which profile information associated with the *first* terminal (that the *second* terminal is cloning) is accessed to establish the call session between the second and third terminals. Basically, Bozek relates to a simple database lookup for speed dial information, and is unrelated to the cloning features recited in claim 1.

McClung is also unrelated to the cloning features of claim 1. As discussed above, McClung simply enables a user to roam to a remote location, where the user can specify that the

call manager direct calls to multiple telephony devices associated with the extension. Thus, at its core, McClung is simply a call forwarding feature to enable roaming by a user. McClung provides no hint of enabling a user at a clone terminal (second terminal) to establish a call session with a third terminal by accessing the profile information of a first terminal. Here, neither McClung nor Bozek provides any teaching, implicit or explicit, of the desirability of the cloning features recited in claim 1, which cloning features are related to call processing in response to a call request intended for the first terminal, and call processing in response to a request from the second terminal (clone terminal) for initiating another call session with a third terminal.

The Examiner provided the following further assertion to support the obviousness rejection:

> [T]he proposed combination of McClung and Bozek would use the roaming method of McClung for incoming calls, while the method of Bozek would be used to handle outgoing calls. This provides the benefit of allowing the user to access speed dialing features for outgoing calls without requiring the mechanism of McClung to be changed for incoming calls. In the next paragraph, Applicant further states that the terminal in Bozek is not a clone. However, McClung disclosed the cloning feature and Bozek is used to modify the clone terminal in McClung.

11/20/2006 Office Action 2-3.

The proposed modification of McClung based on Bozek is clearly erroneous, as detailed above. The incoming call and outgoing call portions of claim 1 are not unrelated call processing tasks – both involve a second terminal that is a clone of the first terminal. The Examiner simply stated that "Bozek is used to modify the clone terminal in McClung." *Id.* at 3. However, what the Examiner failed to appreciate is that there existed no reason to make this proposed modification. No teaching is provided in either McClung or Bozek of processing an outgoing call from the second terminal (clone terminal) in the manner recited in claim 1.

The Examiner has clearly failed to identify a reason that would have prompted a person of ordinary skill in the art to combine the teachings of McClung and Bozek in the manner proposed by the Examiner. *See KSR International Co. v. Teleflex, Inc.*, 2007 U.S. LEXIS 4745, 36 (2007) (noting that it is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does). The only apparent basis for combining the teachings of McClung and Bozek is impermissible hindsight. However, the U.S. Supreme Court has cautioned that impermissible hindsight reconstruction cannot be used to combine reference teachings. *See Graham v. John Deere Co.*, 383 U.S. at 36.

In view of the foregoing, it is clear that the Examiner has failed to establish a *prima facie* case of obviousness against claim 1 and its dependent claims.

Moreover, the hypothetical combination of McClung and Bozek does not teach or hint at the claimed subject matter. The Examiner conceded that McClung fails to disclose the "outgoing" aspect of claim 1 ("receiving a second indication from the second terminal for initiating a second call session with a third terminal" and "accessing profile information associated with the first terminal to process the second indication for establishing the second call session"). 11/20/2006 Office Action at 8. Bozek similarly fails to teach or hint at receiving a second indication from the *second* terminal (that is a *clone* of the *first* terminal) for initiating a second call session, and accessing profile information associated with the *first* terminal to process the second indication for establishing the second call session between the second terminal and the third terminal.

Thus, it is clear that claim 1 is non-obvious in light of McClung and Bozek after performing the second *Graham v. John Deere* factual inquiry, which ascertains the differences

between the claim at issue and the prior art (in this case, the hypothetical combination of McClung and Bozek).

The Examiner, in the Advisory Action, further argued that "Applicant has tried to define the concept of cloning via arguments to be more narrow than that required by the claim language." 2/12/2007 Advisory Action. The Examiner further stated that the "combination of McClung and Bozek discloses the concept of cloning as it has been claimed." *Id.* Moreover, the Examiner stated that "[t]here is no requirement that cloning have the two features described [by Applicant]." *Id.* It is noted that Appellant's arguments have focused exclusively on the explicit claim language. The various elements noted in Appellant's arguments come directly from the claims. As detailed above, the asserted combination of McClung and Bozek clearly does not disclose or hint at the combination of elements recited in claim 1.

Therefore, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 1 and its dependent claims.

In view of the foregoing, reversal of the final rejection of the above claims is respectfully requested.

2. Claim 45.

Claim 45 depends from claim 1, and is thus allowable for at least the same reasons as for claim 1. Moreover, claim 45 recites that accessing the profile information (in response to the second indication received from the second terminal, which is a clone of the first terminal) associated with the first terminal comprises accessing speed dial information of the first terminal (which the second terminal is cloning) to establish the call session between the second and third terminals.

The Examiner cited elements 205 and 207 in Fig. 2 of Bozek as disclosing this feature of claim 45. 11/20/2006 Office Action at 12. Element 205 in Fig. 2 refers to the calling card call server querying a calling card database using a calling card number entered by the caller. Element 207 of Fig. 2 of Bozek refers to the calling card database responding with the speed dial number or the identity of the caller's home switch. Querying a database to obtain a speed dial number clearly does not provide any teaching or hint of the subject matter of claim 45. According to claim 45, the speed dial information accessed is speed dial information of the *first terminal*, where the accessing is in response to the second indication from the second terminal, which is a clone of the first terminal. The speed dial number querying performed using the calling card database, as taught by Bozek, is a simple database lookup that provides no teaching or hint of the accessing of speed dial information recited in claim 1.

For the foregoing additional reason, reversal of the final rejection of the above claim is respectfully requested.

3. Claims 3, 4, 43, and 48.

Independent claim 3 was also rejected as being obvious over McClung and Bozek. With respect to independent claim 3, the Examiner conceded that McClung does not disclose receiving a call request from the second terminal or accessing profile information of the first terminal in response to the call request (the last two acts recited in claim 3). 11/20/2006 Office Action at 9. However, the Examiner again relied upon Bozek as disclosing these last two elements recited in claim 3. It is respectfully submitted, as discussed above in connection with claim 1, that no reason existed to combine the teachings of McClung and Bozek to achieve the claimed subject matter; moreover, even if the references can be combined, the hypothetical combination of McClung and Bozek does not teach or hint at all elements of claim 3.

Therefore, a *prima facie* case of obviousness has also not been established with respect to claim 3 and its dependent claims.

In view of the foregoing, reversal of the final rejection of the above claims is respectfully requested.

4. Claim 47.

Claim 47 depends from claim 3, and is allowable for at least the same reasons as claim 3. Moreover, claim 47 recites that accessing the profile information (in response to the call request from the second terminal that is a clone of the first terminal) of the first terminal comprises accessing speed dial information of the first terminal to establish the call session between the second and third terminals.

As explained above in connection with claim 45, the passage of Bozek relied upon by the Examiner to support the rejection of claim 47 clearly does not provide any hint of the subject matter of claim 47.

Therefore, for the foregoing additional reasons, reversal of the final rejection of the above claim is respectfully requested.

B. Claims 37-40 Rejected Under 35 U.S.C. § 103 Over U.S. Patent No. 6,798,767 (Alexander) In View Of U.S. Patent No. 6,961,346 (Michalewicz).

1. Claims 37-40.

Independent claim 37 was rejected as being obvious over Alexander and Michalewicz. It is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claim 37 over Alexander and Michalewicz.

With respect to claim 37, the Examiner conceded that Alexander does not disclose that its IP telephony device includes a plurality of soft client modules that become clones of respective

terminals, as recited in claim 37. 11/20/2006 Office Action at 13. Instead, the Examiner relied upon Michalewicz as disclosing these soft client modules. *Id.* Specifically, the Examiner cited column 6, lines 33-37, of Michalewicz, which describes a call manager 26a that has software for implementing one or more virtual telephony devices. As explained by Michalewicz, the virtual telephony devices are logically inserted between two or more IP telephony devices to act as an intermediary between the telephony devices. Michalewicz, 6:38-40. Once the relationship is set up, signaling and media streams that pass through the virtual telephony device may be modified through address translation or data stream manipulation. Michalewicz, 6:40-44. As noted by Michalewicz, an implementation of a virtual telephony device is a bridge 28 (depicted in Fig. 1 of Michalewicz). Michalewicz, 6:35-37. There is no hint in Michalewicz that its virtual telephony devices constitute the soft client modules that become *clones* of respective terminals, where each soft client module becomes a clone of a respective terminal by sending a request to a server on a network to select one of the terminals to clone.

In response to Appellant's argument that the virtual telephony devices of Michalewicz are not clones of other terminals, the Examiner stated that "[w]hile this may or may not be true, it is not relevant as this functionality has been disclosed by Alexander as indicated earlier in the rejection." 11/20/2006 Office Action at 3. The fact that Michalewicz does not disclose or hint at multiple soft client modules that are clones of respective terminals, which soft client modules are executable on a control unit of a system, is clearly relevant to the obviousness rejection. With respect to Alexander, the Examiner cited column 12, lines 55-65, as disclosing "sending a request to a server ... to select a terminal to clone ...." *Id.* at 13. The cited passage refers to the editing of an alternate number list 110 by a user, where the alternate number list 110 is used to "create multiple line appearances (*e.g.*, ring multiple telephony devices) when a call is placed to

an IP telephony device." Alexander, 7:26-31. However, there is absolutely no hint within Alexander of providing multiple soft client modules executable on a control unit of a system, where the soft client modules become clones of respective terminals. Michalewicz clearly does not provide the requisite teaching to modify Alexander to achieve the claimed subject matter.

With respect to Michalewicz, the Examiner further cited to column 6, lines 26-38, as suggesting the presence of the multiple soft client modules recited in claim 37. *See* 11/20/2006 Office Action at 3. The cited passage of Michalewicz indicates that the virtual telephony devices of Michalewicz can be implemented as software, and that the call manager 26a may contain software for implementing one or more virtual telephony devices. However, the fact that virtual telephony devices can be implemented as software on a call manager 26a does not change the fact that the virtual telephony devices of Michalewicz do not constitute the soft client modules that become clones of respective terminals, where each soft client module becomes a clone of a respective terminal by sending a request to a server on a network to select one of the terminals to clone.

Clearly, no reason existed to combine the teachings of Alexander and Michalewicz, as incorporating the virtual telephony devices of Michalewicz into Alexander would not provide the plural soft client modules that become clones of respective devices recited in claim 37. Therefore, the obviousness rejection of claim 37 is defective for at least this reason.

Moreover, it is also clear that the hypothetical combination of Alexander and Michalewicz does not teach or hint at all elements of claim 37. As a result, there is a significant difference between the claimed subject matter and the prior art (in this case, the hypothetical combination of Michalewicz and Alexander) which establishes that claim 37 is non-obvious over Alexander and Michalewicz.

In view of the foregoing, reversal of the final rejection of the above claims is respectfully requested.

C. Claim 7 Rejected Under 35 U.S.C. § 103 Over McClung In View Of Bozek And "Applicant's Admitted Prior Art" (AAPA).

1. Claim 7.

In view of the defective obviousness rejection of base claims 1 and 6 over McClung and Bozek, it is respectfully submitted that the obviousness rejection of dependent claim 7 over McClung, Bozek, and AAPA is also defective.

The Examiner conceded that McClung does not disclose a terminal proxy server that communicates with a switch module having plural logical ports, and that the terminal proxy server associates a logical port of the first terminal with the second terminal. 11/20/2006 Office Action at 15. However, the Examiner relied upon AAPA as disclosing this feature. The AAPA refers to the Background section of the present application, and more specifically, to page 2, lines 18-25, of the present application. Although the Background section of the present application mentions that a logical port can be reserved in a switch for a telephony client, there is absolutely no teaching or hint in the Background section of the present application, or in McClung or Bozek, of the terminal proxy server associating a logical port of the *first* terminal with the *second* terminal. Clearly, the hypothetical combination of the references does not disclose or hint at the subject matter of claim 7.

Therefore, reversal of the final rejection of the above claim is respectfully requested.

D. Claim 14 Rejected Under 35 U.S.C. § 103 Over McClung In View Of Bozek And Alexander.

1. Claim 14.

In view of the defective obviousness rejection of base claims 1 and 10 over McClung and Bozek, it is respectfully submitted that the obviousness rejection of dependent claim 14 over McClung, Bozek, and Alexander is also defective.

Therefore, reversal of the final rejection of the above claim is respectfully requested.

E. Claims 16-22 And 44 Rejected Under 35 U.S.C. § 103 Over Alexander In View Of AAPA.

1. Claims 16, 18-22, and 44.

Independent claim 16 was rejected as being obvious over Alexander and AAPA. Appellant respectfully submits that a *prima facie* case of obviousness has not been established with respect to claim 16.

The Examiner conceded that Alexander fails to disclose associating a first logical port between a telephony proxy server and a switch module with both the first and second terminals, and forwarding, by the switch module, the call request through the first logical port to the telephony proxy server. 11/20/2006 Office Action at 17. The Examiner cited AAPA as disclosing use of logical ports between a TPS and a switch. *Id.* Although the Background section of the present application mentions that a logical port can be reserved in a switch for a telephony client, there is absolutely no hint in the Background section of the present application, or in Alexander, of associating a first logical port between a TPS and a switch module with *both* the first and second terminals. Moreover, there is no hint in the Background section of the present application of forwarding, by the switch module, the call request (which specifies the second terminal) through the first logical port to the telephony proxy server.

Alexander provides no hint whatsoever that it would even be desirable to incorporate a TPS and a switch module with a logical port provided therebetween. Moreover, there is no hint in either Alexander or the Background section of the present application of associating a logical port between a TPS and switch module with *both* the first and second terminals.

It is important to note that the purported association between "two terminals in response to the request in the updated alternate number list" referred to in Alexander is an association based on an alternate number list. The Examiner stated that "[t]he call manager [of Alexander] performs the exact same functionality as the article in the claim language; there are merely semantic differences in how this functionality is described." *Id.* at 4. This statement is clearly erroneous, as the subject matter of claim 16 is *substantively* different (not just semantically different) from what is disclosed by Alexander. The association using an alternate number list, as taught by Alexander, is completely different from associating a first logical port between a telephony proxy server and a switch module with both first and second terminals, as claimed.

Despite the significant differences between the subject matter of Alexander and the claimed invention, the Examiner used impermissible hindsight reconstruction to make the following assertion:

> Alexander teaches the limitation of associating the first and second terminals and the AAPA discloses that the logical port software construct is merely a well-known way of implementing such a system; given the association of Alexander, it is obvious to implement it using the logical port construct of the AAPA.

11/20/2006 Office Action at 5.

There clearly did not exist any reason for or hint of replacing the alternate number list of Alexander with the logical port reserved by a terminal proxy server in a switch for a telephony client described in the Background section of the present application. The *prima facie* case of obviousness with respect to claim 16 is defective for at least this reason.

Moreover, there clearly did not exist any hint by either Alexander or AAPA of associating *one* logical port between a TPS and a switch module with *both* first and second terminals. No mention of the logical port between a TPS and switch module is made in Alexander. The AAPA merely states that the TPS reserves *a* logical port in the switch for *the* telephony client (note the singular sense). Thus, since neither Alexander nor AAPA discloses or hints at the subject matter of claim 16, the hypothetical combination of the references also does not disclose all elements of claim 16.

The *prima facie* case of obviousness with respect to claim 16 and its dependent claims is defective for this additional reason.

Reversal of the final rejection of the above claims is respectfully requested.

2. Claim 17.

Claim 17 depends from claim 16, and is thus allowable for at least the same reasons as claim 16. Moreover, claim 17 recites that the second terminal is disabled. Note that, according to claim 17, the first terminal is a clone of the second terminal (which is disabled according to claim 17).

The Examiner identified column 12, lines 55-65, of Alexander as teaching this element of claim 17, noting that a terminal "can be disabled by modifying the alternate number list to remove the terminal from the list. 11/20/2006 Office Action at 18.

This analysis is flawed. Note that according to the Examiner, the devices of the alternate number list are the clones of the target device. In the context of claim 17, the disabled second terminal is the target terminal that is being cloned by the first terminal. Therefore, removing a device from the alternate number list of Alexander merely removes a clone device, according to

the reading of the Office Action. In other words, Alexander does not disclose disabling the target device.

In other words, it is clear that Alexander does not disclose or hint at disabling the second terminal (which is the terminal that is being cloned by the first terminal in claim 17). In fact, Alexander teaches the opposite, requiring that the target device has to be rung with the alternate devices. As taught by Alexander, the alternate devices may be rung simultaneously with the target device (Alexander, 2:17-18), or one or more of the alternate devices may be rung at a specified time after the target telephony device is rung (Alexander, 2:18-20). Clearly, contrary to the assertion by the Examiner, Alexander does not disclose or even hint at disabling the second terminal, where the second terminal is the target terminal that is being cloned by the first terminal.

In view of the foregoing, reversal of the final rejection of the above claim is respectfully requested.

F. Claims 23, 25-31, And 33-35 Rejected Under 35 U.S.C. § 103 Over Alexander In View Of AAPA And U.S. Patent No. 6,263,064 (O'Neal).

1. Claims 23, 25-31, and 33-35.

Independent claim 23 was rejected as being obvious over Alexander, AAPA, and O'Neal. In view of the fact that there existed no reason to combine Alexander and AAPA, it is respectfully submitted that there also existed no reason to combine the teachings of Alexander, AAPA, and O'Neal to achieve the subject matter of claim 23.

Moreover, the Examiner conceded that Alexander does not disclose storing a table associating identifiers of the first and second terminals with a first logical port. 11/20/2006 Office Action at 20. However, the Examiner relied upon AAPA as disclosing the use of a logical

port. Contrary to the Examiner's assertion, the AAPA does not teach or even hint at storing a table associating identifiers of *both* first and second terminals with a first logical port. As noted above in connection with claim 16, it is respectfully submitted that no reason existed to combine the teachings of Alexander and AAPA, and thus the obviousness rejection over Alexander, AAPA, and O'Neal is also defective.

In addition, the Examiner conceded that Alexander and AAPA do not teach updating a table to indicate that one of the first and second terminals that answered the call requests is the terminal to which subsequent call requests containing the first logical identifier are to be directed. *Id.* at 21. However, the Examiner cited O'Neal as teaching this element. Specifically, the Examiner pointed to column 12, lines 54-57, of O'Neal as teaching this recited element. The cited passage refers to a "follow me" service that uses the number where the subscriber was last located (stored in memory) as the first number to dial in the sequence. Note, however, that even O'Neal does not teach or hint at updating a *table* (that associates identifiers of first and second terminals with a first logical port) to indicate that one of the first and second terminals that answered the call request is the terminal to which subsequent call requests containing the first logical identifier are to be directed.

The Examiner further stated that Alexander discloses the use of an alternate device table, and thus, this alternate device table of Alexander would be used in the combination of Alexander, AAPA, and O'Neal. 11/20/2006 Office Action at 6. This type of rejection in which elements of prior art references are piece-meal combined is a classic example of impermissible hindsight. *See Graham v. John Deere Co.*, 383 U.S. at 36.

The Examiner further made the following statement:

> If the teaching of O'Neil were applied such that the indication of which terminal answered the call request were merely generically updated in "memory", as

> Applicant appears to suggest, this indication would not be useful. Only when associated with the same information used in processing the call requests in Alexander (i.e. the table) will this information be useful.

11/20/2006 Office Action at 6.

The updating of the indication in the follow-me service of O'Neil is clearly "useful" in the context of the follow-me service of O'Neil. The fact that the Examiner conceded that the updating of the indication of O'Neil would not be "useful" in Alexander is clearly indicative of the fact that a person of ordinary skill in the art would not have been motivated to modify Alexander based on the teachings of O'Neil. Even the Examiner recognizes that incorporating the update of the indication of O'Neil in the Alexander system "would not be useful." Rather than recognize this point, the Examiner incorrectly asserted that it would have been obvious to replace the indication of O'Neil with the table of Alexander, where no reason existed for such a combination.

In view of the foregoing, it is clear that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 23.

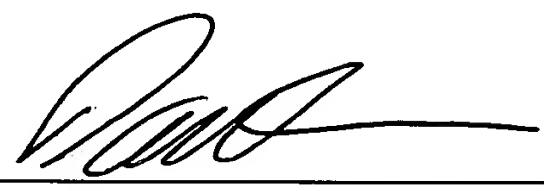
Therefore, reversal of the final rejection of the above claims is respectfully requested.

CONCLUSION

In view of the foregoing, reversal of all final rejections and allowance of all pending claims is respectfully requested.

Respectfully submitted,

Date: May 14, 2007



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VIII. APPENDIX OF APPEALED CLAIMS

The claims on appeal are:

1. A method of controlling communications in a network, comprising:

receiving a request to clone a first terminal with a second terminal;

in response to the request to clone, associating a logical identifier of the first terminal with the second terminal;

receiving a call request specifying the logical identifier of the first terminal, the call request to initiate a first call session;

in response to the call request, sending an alert indication to the second terminal regarding the first call session;

receiving a second indication from the second terminal for initiating a second call session with a third terminal;

in response to the second indication, accessing profile information associated with the first terminal to process the second indication for establishing the second call session between the second terminal and the third terminal.

2. The method of claim 1, wherein associating the logical identifier of the first terminal with the second terminal comprises associating a directory number of the first terminal with the second terminal.

3. A method of controlling communications in a network, comprising:

receiving a request to clone a first terminal with a second terminal;

in response to the request to clone, associating a logical identifier of the first terminal with the second terminal;

wherein associating the logical identifier comprises storing a table associating the logical identifier with identifiers of the first and second terminals;

receiving a call request from the second terminal to initiate a call session with a third terminal; and

in response to the call request, accessing profile information of the first terminal to establish the call session between the second terminal and third terminal.

4. The method of claim 3, wherein storing the table comprises storing a table associating the logical identifier with Internet Protocol addresses of the first and second terminals.

5. The method of claim 1, further comprising receiving at least another request to clone the first terminal with at least another terminal.

6. The method of claim 1, wherein receiving the request to clone comprises receiving the request to clone in a terminal proxy server.

7. The method of claim 6, wherein the terminal proxy server communicates with a switch module having plural logical ports, the method further comprising the terminal proxy server associating a logical port of the first terminal with the second terminal.

8. The method of claim 1, wherein the request to clone comprises a request to override the first terminal with the second terminal.

9. The method of claim 8, wherein an alert indication is not sent to the overridden first terminal in response to the call request.

10. The method of claim 1, wherein the request to clone comprises a request to replicate the first terminal with the second terminal.

11. The method of claim 10, further comprising sending another alert indication to the first terminal in response to the call request.

12. The method of claim 11, further comprising receiving an answer indication from one of the first terminal and second terminal in response to the alert indications.

13. The method of claim 11, further comprising establishing the first call session between another terminal that sent the call request and one of the first terminal and second terminal.

14. The method of claim 10, wherein sending the alert indication comprises multicasting the alert indication for receipt by the first and second terminals.

16. An article comprising at least one storage medium containing instructions that when executed cause a system to:

receive a request to establish a first terminal as a clone of a second terminal;

in response to the request, associate a first logical port between a telephony proxy server and a switch module with both the first and second terminals;

receive, at the switch module, a call request specifying the second terminal as a target;

forward, by the switch module, the call request through the first logical port to the telephony proxy server; and

route, by the telephony proxy server, the call request to the first terminal.

17. The article of claim 16, wherein the instructions when executed cause the system to further disable the second terminal.

18. The article of claim 16, wherein the instructions when executed cause the system to further set the first terminal as a replicate of the second terminal.

19. The article of claim 18, wherein the instructions when executed cause the system to further route the call request to the second terminal.

20. The article of claim 19, wherein the instructions when executed cause the system to further receive an indication from one of the first and second terminals that the call request has been answered.

21. The article of claim 20, wherein the instructions when executed cause the system to further establish a call session between another terminal that transmitted the call request and the one of the first and second terminals.

22. The article of claim 16, wherein the instructions when executed cause the system to receive the call request over a packet-based network.

23. A system comprising:

an interface to a network coupled to at least a first terminal and a second terminal; and

a control module adapted to, in response to a request from a first terminal, define the first terminal as a clone of a second terminal, the control module adapted to further:

store a table associating identifiers of the first and second terminals with a first logical port,

receive a call request containing a first logical identifier associated with the first and second terminals,

in response to the call request, alert both the first and second terminals, and

based upon whether the first terminal or second terminal answered the call request, update the table to indicate that the one of the first and second terminals that answered the call request is the terminal to which subsequent call requests containing the first logical identifier are to be directed.

25. The system of claim 23, wherein the first logical identifier comprises a directory number.

26. The system of claim 23, further comprising a switch module communicatively coupled to the control module.

27. The system of claim 26, wherein the control module is adapted to receive a request from the first terminal to establish a call, and wherein the switch module is adapted to treat the request as a request from the second terminal.

28. The system of claim 26, wherein the switch module is associated with plural logical ports, the control module adapted to select one of the logical ports for communicating signaling of the first terminal.

29. The system of claim 28, wherein the selected logical port comprises a logical port assigned to the second terminal.

30. The system of claim 23, wherein the control module comprises a terminal proxy server.

31. The system of claim 30, further comprising a storage unit containing information associating a directory number with the first and second terminals.

33. The system of claim 23, wherein the control module is adapted to set the first terminal as a replicate of the second terminal.

34. The system of claim 23, wherein the interface comprises an interface to an Internet Protocol network.

35. The system of claim 23, wherein the first terminal comprises a wireless terminal.

37. A system for cloning terminals coupled to a network, comprising:

a control unit; and

a plurality of soft client modules executable on the control unit,

each soft client module adapted to send a request to a server on the network to select one of the terminals to clone,

wherein the soft client modules become clones of respective terminals.

38. The system of claim 37, wherein each soft client module is adapted to receive an alert indication from the server corresponding to a call request received by the server for the terminal the soft client module is cloning.

39. The system of claim 37, further comprising a router to select one of the soft client modules for communicating packets in a call session.

40. The system of claim 39, comprising an Internet Protocol layer associated with one Internet Protocol address, the router using an additional code in each packet to select one of the soft client modules.

43. The method of claim 3, wherein storing the table associating the logical identifier with identifiers of the first and second terminals comprises storing the table associating the logical identifier with both the identifier of the first terminal and the identifier of the second terminal.

44. The article of claim 16, wherein forwarding the call request over the first logical port is performed instead of forwarding the call request over a second logical port from the switch module to the telephony proxy server, the second logical port previously associated with the first terminal prior to the request to establish the first terminal as a clone of the second terminal.

45. The method of claim 1, wherein accessing the profile information comprises accessing speed dial information of the first terminal to establish the call session between the second and third terminals.

46. The method of claim 1, wherein receiving the call request comprises receiving the call request from a fourth terminal.

47. The method of claim 3, wherein accessing the profile information comprises accessing speed dial information of the first terminal to establish the call session between the second and third terminals.

48. The method of claim 3, further comprising:

receiving a second call request from a fourth terminal specifying the logical identifier of the first terminal; and

sending an alert indication to the second terminal in response to the second call request.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.

CANCELLED

TRANSMITTAL OF APPEAL BRIEF (Large Entity)	Docket No. NRC.0008US

In Re Application Of: **Robert P. Macaulay et al.**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/723,591	11-28-2000	Robert C. Scheibel	21906	2616	8528

Invention: **Method and Apparatus for Cloning Terminals in a Communications Network**

COMMISSIONER FOR PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

March 16, 2007.

The fee for filing this Appeal Brief is: **$500.00**

☒ A check in the amount of the fee is enclosed.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **20-1504** (NRC.0008US) I have enclosed a duplicate copy of this sheet.

☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Signature

Dated: **May 14, 2007**

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

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